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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

SHEIK MOINUDDIN,

Plaintiff and Appellant,

v.

CALIFORNIA STATE PERSONNEL  
BOARD et al.,

Defendants and Respondents.

B287714

(Los Angeles County  
Super. Ct. No. BS168195)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mary H. Strobel, Judge. Affirmed.

Hennig Ruiz & Singh, Rob Hennig and Shoshee Jau Hui; Law Office of Jeffrey A. Richmond and Jeffrey A. Richmond, for Plaintiff and Appellant.

Scherer, Montoya, Dadaian, Solares, Del Rivo, Jeanne E. Scherer, Jerald M. Montoya, and Steven M. Rich, for Defendant and Respondent California Department of Transportation.

No appearance for Defendant and Respondent California  
State Personnel Board.

Plaintiff and appellant Sheik Moinuddin (Moinuddin) filed a petition for writ of administrative mandamus challenging his demotion from a position at the California Department of Transportation (Caltrans), a demotion that was later affirmed by the State Personnel Board (the Board). Moinuddin's original petition named the Board, but not Caltrans, as a party. When Moinuddin eventually amended the petition to name Caltrans as a respondent, Caltrans demurred and argued the six-month statute of limitations by then had run. The trial court sustained the demurrer without leave to amend. We consider whether the trial court erred in sustaining the demurrer on statute of limitations grounds, which included a finding that the doctrine of equitable tolling could not apply to save Moinuddin's claims. We also consider whether the trial court abused its discretion in deciding Caltrans was an indispensable party such that dismissal was required.

## I. BACKGROUND

### A. *Moinuddin's Employment by Caltrans and Proceedings Before the Board*

Moinuddin was a full-time Civil Service Commission appointee and employee of Caltrans. He began working at Caltrans as a Transportation Engineer in January 1991. He was promoted to Senior Transportation Engineer in September 1998 and to Principal Transportation Engineer in November 2014. After this last promotion, Moinuddin was subject to a one-year probationary period, which was set to expire on November 27, 2015.

A few days before the end of Moinuddin's probationary period, Caltrans served Moinuddin with a notice of rejection of

probation, which informed him that it intended to demote him from the position effective December 8, 2015. The notice was procedurally defective, however, and Moinuddin's promotion to Principal Transportation Engineer therefore took effect in late November. The following month, Caltrans withdrew the defective notice and served Moinuddin with a notice of adverse action demoting him from Principal Transportation Engineer to Senior Transportation Engineer. The notice of adverse action, like the notice of rejection of probation, was based on incidents that occurred during Moinuddin's probationary period.<sup>1</sup>

Moinuddin appealed his demotion to the Board. The appeal was heard by an administrative law judge (ALJ) in November 2016. The ALJ sustained the demotion. The ALJ concluded Moinuddin had not proven the demotion was unsupported by substantial evidence or was the product of fraud or bad faith. The ALJ also concluded, among other things, that Moinuddin's conduct was cause for discipline under the pertinent Government Code section, and that his demotion was appropriate. The ALJ's decision was adopted by the Board in early January 2017 and served on Moinuddin several days later, on January 9.

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<sup>1</sup> These incidents included Moinuddin offering a promotion to an employee without obtaining clearance from Caltrans's personnel office, breaching the confidentiality of a workplace violence investigation by including an uninvolved employee in a meeting with the employee who filed the complaint, becoming argumentative with his supervisor when provided with his first probationary report, and failing to complete a number of tasks he had been instructed to perform by his supervisor.

*B. This Action*

*1. The original petition*

Moinuddin filed a verified petition for writ of mandate naming the Board as the sole respondent in early March 2017. The petition alleged Moinuddin was beneficially interested in the issuance of a writ of mandate because he possessed a vested property interest in his employment as a Principal Transportation Engineer and had no further administrative remedies to compel the Board to overturn or reconsider his demotion (which he termed a “dismissal”). Moinuddin further alleged the Board’s decision constituted a prejudicial abuse of discretion.

The petition’s prayer for relief asked the court to set aside the Board’s decision sustaining Moinuddin’s demotion and to reinstate him to his former position as a Principal Transportation Engineer. It also asked the court to award Moinuddin “back pay and benefits from the date of [his] demotion through the date of his reinstatement.”

Later that month, the Board answered Moinuddin’s petition. The answer generally denied the allegations and, in pertinent part, alleged the Board (as contrasted with Caltrans, Moinuddin’s employer) is “an impartial quasi-judicial tribunal” and “d[id] not anticipate taking any advocacy position in support of or against [Moinuddin] in this action.” The Board further represented in its answer that it would comply with the final judgment or order to the extent required by law, but reserved the right to appeal if the judgment were adverse to its interests.

The following month, Moinuddin filed a notice of related case informing the court of another case he had filed against Caltrans. The court found the cases were not related.

On June 29, 2017, the trial court held a trial setting conference. Counsel for the Board did not appear. A Deputy Attorney General in the courtroom for another matter contacted the Board and communicated that the Board had filed an answer in the case indicating it would not actively participate in the case and would abide by the court's ruling. Moinuddin acknowledged on the record that he had not named Caltrans in his mandate petition as a respondent, and the trial court explained the failure to name Caltrans might pose problems for Moinuddin. The court continued the trial setting conference for 60 days to allow Moinuddin to consider whether Caltrans was a necessary party.

*2. The amended petition and demurrer proceedings*

Moinuddin and the Board (but not Caltrans) thereafter stipulated to allow Moinuddin to amend his petition "to add real party in interest" Caltrans as a respondent. Moinuddin filed his first amended and verified petition for writ of mandate on July 21, 2017, naming Caltrans as a respondent.

The following month, Caltrans answered and demurred. The demurrer argued the amended petition was untimely under the prevailing the six-month statute of limitations, which expired on July 10, 2017 (July 9, 2017, was a Sunday). Caltrans's demurrer further argued Moinuddin's failure to timely name Caltrans constituted a fatal defect because Caltrans was an indispensable party.

In opposition, Moinuddin argued: (1) Caltrans was not an indispensable party, (2) the doctrine of equitable tolling applied and therefore the statute of limitations had not run, (3) Caltrans should be barred from asserting a statute of limitations defense

under the doctrine of laches because Caltrans knew about the action but did not intervene, and (4) the issues were not suitable for determination on demurrer. He also argued he should be granted leave to amend. With his opposition, Moinuddin asked the trial court to judicially notice other documents in the court's file, including the Board's answer to the petition.

Accompanying Moinuddin's opposition was a declaration authored by one of his attorneys. The attorney declaration averred Moinuddin "believed in good faith that the . . . Board was the only party necessary for this action, as the action sought review and the setting aside of the Board's decision on the basis that its [ALJ] abused his discretion and acted in excess of his authority." The attorney's declaration additionally claimed: the Board's answer "suggested that the . . . Board would fully defend the propriety of its ruling," the June trial setting conference "was the first time [Moinuddin] learned that the . . . Board would not be participating in this litigation," and Moinuddin would have sought to amend his pleadings earlier if he had known the Board would decline to participate.

The trial court sustained the demurrer without leave to amend. The court explained Caltrans was an indispensable party without which the action could not properly proceed. As to Moinuddin's attempt to name Caltrans as an adverse party in his amended petition, the court found the amended petition was untimely because it was filed more than six months after the Board served its final decision. The court also found the amended petition did not relate back to the filing of the original petition and that Moinuddin could not have named Caltrans as a "Doe" defendant because he was not ignorant of Caltrans's identity when he filed the petition. The court further found

equitable tolling could not apply to render claims against Caltrans timely because Moinuddin had not alleged he pursued another claim against Caltrans in a different forum and had not satisfied the requirement he show good faith and reasonable conduct because the Board's answer months before put him on notice that the Board did not intend to actively defend the petition. Finally, the court rejected Moinuddin's laches argument because it was unsupported by authority and would effectively require a party not named as a defendant to intervene in a case before the running of the statute of limitations.

## II. DISCUSSION

It is undisputed that Moinuddin did not name Caltrans as a party to the matter until after the applicable statute of limitations had run. Not only that, he did not promptly seek to name Caltrans as an adverse party even after the Board filed an answer to his petition indicating it would not substantively participate in the case and the trial court warned him of the potential indispensable party problem over a week before the end of the six-month limitations period. The only explanation Moinuddin has offered for his failure to name Caltrans earlier is his belief that the Board was the only party necessary to the action because it was the Board's decision he sought to overturn. That is insufficient to warrant application of the doctrine of equitable tolling, and because the trial court correctly determined Caltrans is an indispensable party, the court's dismissal of this action was proper.



A. *The Trial Court Was Correct to Sustain the Demurrer Without Leave to Amend Because the Statute of Limitations Had Run*

Pursuant to Government Code section 19630, “[a]ny petition for a writ challenging a decision of the [B]oard shall be filed within six months of the date of the final decision of the [B]oard.” A Board decision on an appeal becomes final upon service. (Cal. Code Regs., tit. 2, § 51.6.)

The Board served its decision on Moinuddin on January 9, 2017. Moinuddin did not name Caltrans as a party to the action until July 21, 2017, and did not serve Caltrans until July 27, 2017. The amended petition naming Caltrans was therefore untimely on its face and Moinuddin does not contend otherwise.

Instead, Moinuddin argues his amended petition and documents subject to judicial notice demonstrate he may be entitled to equitable tolling of the statute of limitations. He also argues the trial court abused its discretion in denying him leave to amend. Neither contention has merit.

1. *Standard of review*

We review an order sustaining a demurrer without leave to amend de novo. (*Centinela Freeman Emergency Medical Associates v. Health Net of California, Inc.* (2016) 1 Cal.5th 994, 1010; *Morales v. 22nd Dist. Agricultural Assn.* (2016) 1 Cal.App.5th 504, 537.) “[W]e accept the truth of material facts properly pleaded in the operative complaint, but not contentions, deductions, or conclusions of fact or law. We may also consider matters subject to judicial notice. (*Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 6[ ].)” (*Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919, 924, fn. omitted (*Yvanova*).)

“To determine whether the trial court should, in sustaining the demurrer, have granted plaintiff leave to amend, we consider whether on the pleaded and noticeable facts there is a reasonable possibility of an amendment that would cure the complaint’s legal defect or defects. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081[ ].)” (*Yvanova, supra*, 62 Cal.4th at p. 924.) “If we see a reasonable possibility that the plaintiff could cure the defect by amendment, then we conclude that the trial court abused its discretion in denying leave to amend. If we determine otherwise, then we conclude it did not.” (*Campbell v. Regents of University of California* (2005) 35 Cal.4th 311, 320.) “The burden of proving such reasonable possibility is squarely on the plaintiff.” (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

## 2. *Equitable tolling cannot apply*

Equitable tolling is a judicially created doctrine “designed to prevent unjust and technical forfeitures of the right to a trial on the merits when the purpose of the statute of limitations—timely notice to the defendant of the plaintiff’s claims—has been satisfied.’ [Citation.]” (*McDonald v. Antelope Valley Community College Dist.* (2008) 45 Cal.4th 88, 99 (*McDonald*).) The doctrine reflects “a general policy which favors relieving plaintiff from the bar of a limitations statute when, possessing several legal remedies he, reasonably and in good faith, pursues one designed to lessen the extent of his injuries or damage.’ [Citation.]” (*J.M. v. Huntington Beach Union High School Dist.* (2017) 2 Cal.5th 648, 657 (*J.M.*).)

Equitable tolling can apply “where one action stands to lessen the harm that is the subject of a potential second action; where administrative remedies must be exhausted before a

second action can proceed; or where a first action, embarked upon in good faith, is found to be defective for some reason.

[Citation.]”<sup>2</sup> (*McDonald*, *supra*, 45 Cal.4th at p. 100.) To apply, equitable tolling requires a showing of the following elements: “timely notice, and lack of prejudice, to the defendant, and reasonable and good faith conduct on the part of the plaintiff.’ [Citation.]” (*Id.* at p. 102.)

Moinuddin has not demonstrated he is entitled to equitable tolling. Obviously, there are no duplicative proceedings or alternative legal remedies that explain Moinuddin’s tardiness. (Compare *McDonald*, *supra*, 45 Cal.4th at p. 100; *Elkins v. Derby* (1974) 12 Cal.3d 410, 419-420.)

Moinuddin nonetheless argues, and he is correct, that pursuit of an alternate remedy is not invariably required for equitable tolling to apply. (*J.M.*, *supra*, 2 Cal.5th at p. 658 [“[P]ursuit of an alternate remedy is not always required for equitable tolling”].) What *is* invariably required for equitable tolling to apply, however, is what is lacking here: the party invoking the doctrine must “establish an injustice.” (*Ibid.*)

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<sup>2</sup> Our colleagues in the Fourth District recently described the categories of cases in which equitable tolling has been recognized as follows: “(1) the plaintiff is pursuing an alternative remedy in another forum; (2) under narrow circumstances, while plaintiff is pursuing the same remedy in the same forum; (3) where a defendant fraudulently conceals the cause of action; and (4) in certain actions against an insurer.” (*Reid v. City of San Diego* (2018) 24 Cal.App.5th 343, 360.)

In *J.M.*, a plaintiff who had not pursued an alternate remedy had not established the injustice necessary for equitable tolling because he “simply failed to comply with the claims statutes.” (*J.M.*, *supra*, 2 Cal.5th at p. 658.) Similarly here, Moinuddin simply failed to name Caltrans as a respondent before the statute of limitations ran. Neither any allegations in the petition nor any judicially noticeable facts indicate Moinuddin’s failure was caused by some factor that would render the application of the statute of limitations unjust. Because Moinuddin has not established an injustice, he has failed to advance a sufficient basis for equitable tolling. (*Ibid.*)

In addition, Moinuddin’s amended petition and judicially noticeable facts do not support his contention that he acted reasonably and in good faith in failing to name Caltrans as a party before the statute of limitations ran. “A petition for writ of mandate must name the real party in interest, who thereafter has a right to notice and to be heard before a trial or appellate court issues a peremptory writ.” (*Sonoma County Nuclear Free Zone v. Superior Court* (1987) 189 Cal.App.3d 167, 173.) Caltrans—Moinuddin’s employer and the entity that would be responsible for restoring Moinuddin to his former position and providing him with back pay—was unquestionably a real party in interest. (*Ibid.* [real parties in interest include “anyone having a direct interest in the result” and “the real adverse party . . . in whose favor the act complained of has been done”].)

Indeed, even if we assume Moinuddin’s initial failure to name Caltrans as a party was a reasonable, good-faith mistake, that assumption no longer holds once the Board answered the petition. That answer, filed two weeks after the petition, plainly stated the Board “d[id] not anticipate taking any advocacy

position in support of or against the Petitioner in this action.” In light of that representation, it was not reasonable for Moinuddin to proceed under the assumption that his petition (which sought relief directly impacting Caltrans’s interests) did not need to name Caltrans as a respondent. Further, the trial court alerted Moinuddin to the problem at the trial setting conference on June 29, 2017, which was more than a week before the six-month statute of limitations would run. Moinuddin nevertheless did not seek to file his first amended petition until July 21, 2017.

The record and briefing in this court further demonstrates Moinuddin has no ability to amend his petition to allege facts that would support application of equitable tolling. Moinuddin proposes adding to the petition allegations that Caltrans knew about this lawsuit, that Caltrans is in possession of relevant documents, and, on information and belief, that Caltrans intentionally concealed information from him during the pendency of this lawsuit. None of these would be a proper predicate for equitable tolling because none demonstrate either that Moinuddin acted reasonably and in good faith by failing to name Caltrans as a party or that declining to apply the doctrine of equitable tolling would work an injustice.

*B. The Trial Court Was Correct to Sustain the Demurrer to the Entire Action for Failure to Join an Indispensable Party*

*1. Background law and standard of review*

Code of Civil Procedure section 389, subdivision (a), provides a party is necessary to a proceeding if “(1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and

is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.” Once a court has determined a party is “necessary” under these criteria, a court “then determine[s] if the party is also ‘indispensable.’ Under this analysis ‘the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed without prejudice, the absent person being thus regarded as indispensable. The factors to be considered by the court include: (1) to what extent a judgment rendered in the person’s absence might be prejudicial to him or those already parties; (2) the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; (3) whether a judgment rendered in the person’s absence will be adequate; [and] (4) whether the plaintiff or cross-complainant will have an adequate remedy if the action is dismissed for nonjoinder.’ (Code Civ. Proc., § 389, subd. (b).)” (*City of San Diego v. San Diego City Employees’ Retirement System* (2010) 186 Cal.App.4th 69, 83-84 (*City of San Diego*).)

“Whether a party is necessary and/or indispensable is a matter of trial court discretion in which the court weighs “factors of practical realities and other considerations.” [Citation.]” (*City of San Diego, supra*, 186 Cal.App.4th at p. 84; see also *ibid.* [“A court has the power to proceed with a case even if indispensable parties are not joined”].) We review an indispensable party determination for an abuse of discretion. (*Dreamweaver*

*Andalusians, LLC v. Prudential Ins. Co. of America* (2015) 234 Cal.App.4th 1168, 1173 (*Dreamweaver*).

2. *The trial court did not abuse its discretion in determining Caltrans was an indispensable party*

Moinuddin argues the trial court “made two mistakes” in ruling on the indispensable party issue.<sup>3</sup> First, he contends the trial court erred by concluding “it had no choice but to dismiss [his] petition in the absence of the agency that was the real party in interest,” arguing the determinations required by section 389 are always discretionary and the statute calls for a “holistic” consideration of what “equity and good conscience” require. Second, he contends the trial court’s discussion of the last factor specified in section 389, subdivision (b)—whether he would have an adequate remedy if the action were dismissed for nonjoinder—was “inadequate under the circumstances.” Neither argument is persuasive.

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<sup>3</sup> Moinuddin also contends in passing that the trial court “confused and conflated the concepts” of necessary and indispensable parties and he emphasizes that the court’s discussion does not mention “necessary party.” Moinuddin does not, however, argue that Caltrans was actually an unnecessary party or that any such determination was an abuse of discretion. To the extent Moinuddin argues the lack of discussion constituted an abuse of discretion, the argument fails both because we presume the trial court considered the relevant factors and because Moinuddin has not presented a “meaningful analysis concerning the application of the Code of Civil Procedure section 389, subdivision ([a]) factors to the underlying facts.” (*Dreamweaver, supra*, 234 Cal.App.4th at p. 1177.)

First, the record does not demonstrate the trial court believed “it had no choice” but to dismiss the action for nonjoinder. Though the trial court stated Caltrans was both a real party in interest and an indispensable party, it expressly recognized its discretion to allow the action to proceed pursuant to section 389, subdivision (b). The court then found dismissal was appropriate based on its consideration of the facts before it. That the trial court declined to exercise its discretion does not demonstrate it believed it had no choice but to dismiss the action.

Second, the length of the trial court’s discussion of the section 389 factors is not the sole determinant of an abuse of discretion and rarely is it a significant one—had the trial court given a long but legally or factually incorrect recitation of reasons, we would be obligated to reverse. Charitably understood, the thrust of Moinuddin’s argument is that the trial court could not have properly considered whether he lacked other remedies because if it had, “equity and good conscience” would have prevented it from deeming Caltrans indispensable.

In reaching its decision, the trial court found that (1) a judgment granting the petition would severely prejudice Caltrans’s interests, (2) it could not fashion a judgment to avoid such prejudice, (3) Moinuddin’s resulting lack of a remedy was a result of his own failure to comply with the statute of limitations, and (4) equitable considerations did not weigh against dismissal because any lack of remedy was caused by Moinuddin’s own failure to comply with the statute of limitations. Moinuddin does not challenge the first two findings. Nor does he truly challenge the court’s finding that any lack of remedy was the result of his own actions. Instead, he contends the trial court’s conclusion that dismissal was appropriate because he failed to comply with



the statute of limitations is “circular” because the expiration of a statute of limitations is itself susceptible to equitable defenses. Moinuddin, however, misses the key point. The trial court’s ruling rests on more than just his failure to comply with the statute of limitations. It rests on the fact that his failure to comply was due to his own actions and could not be attributed to, or otherwise excused by, any other factors.

The only explanation Moinuddin provided for his failure to name Caltrans as a party was his attorney’s declaration that he “believed in good faith that the . . . Board was the only party necessary for this action, as the action sought review and the setting aside of the Board’s decision on the basis that its [ALJ] abused his discretion and acted in excess of his authority.” This representation, however, is inconsistent with the relief Moinuddin sought in this action—reinstatement to his prior position and back pay—that directly implicated Caltrans and not the Board. Given the trial court’s uncontested findings that a judgment granting the petition would severely prejudice Caltrans’s interests and that it could not fashion a judgment to avoid such prejudice, the court’s decision that the balance of equities weighed in favor of dismissing the action neither exceeded the bounds of reason nor resulted in a miscarriage of justice. (*Espejo v. The Copley Press, Inc.* (2017) 13 Cal.App.5th 329, 378.)

Finally, Moinuddin has not demonstrated he could allege facts sufficient to overcome these deficiencies. The only additional facts Moinuddin claims he could allege relate to the asserted harms he will suffer if this action is dismissed. That is insufficient (a) because the trial court already considered such harms and (b) because lack of an adequate remedy for asserted

wrongs does not alone render a trial court's decision an abuse of discretion. (*Save Our Bay, Inc. v. San Diego Unified Port Dist.* (1996) 42 Cal.App.4th 686, 698-699 [lack of an adequate remedy is often "an unavoidable result in any case where an indispensable party is not joined and the limitations period has run"]; see also *Liang v. San Francisco Residential Rent Stabilization & Arbitration Bd.* (2004) 124 Cal.App.4th 775, 778-779; *Kaczorowski v. Mendocino County Bd. of Supervisors* (2001) 88 Cal.App.4th 564, 570-571.)

## DISPOSITION

The judgment is affirmed. Respondents shall recover their costs on appeal.

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BAKER, J.

We concur:

RUBIN, P. J.

MOOR, J.